

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

RESOLVES
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

tion of any actions necessary to meet Medicaid requirements in each of the departments or the local provider agencies of the departments;

4. Identification of eligible expenditures. Identification of existing expenditures eligible for matching funds under the Medicaid program and any appropriations that could be converted to Medicaid seed dollars; and

5. Identification of implementation resources. Identification of actions and resources necessary to implement eligible service options in each of the 4 departments; and be it further

Sec. 4. Interim plan; final plan. Resolved:
That the plan shall be prepared in 2 phases.

1. Interim plan. The interim plan must:

A. Be completed by March 31, 1991, and must be presented to the Joint Standing Committee on Appropriations and Financial Affairs on or before April 15, 1991;

B. Summarize the result of interdepartmental planning and actions to secure federal approval of new Medicaid options or uses;

C. Identify options needing further exploration or development and include a work plan for exploration or development;

D. Request such additional resources or statutory authorization as may be necessary to complete the plan and its implementation; and

E. Project federal revenue resulting from the completion of the interim plan which requires legislative authorization for expenditure.

2. Final plan. The final plan must:

A. Be completed by December 31, 1991, and must be presented to the Joint Standing Committee on Appropriations and Financial Affairs by January 15, 1992;

B. Specify how Medicaid will be used to support community-based services for children and families;

C. Present an allocation plan prepared by the 4 agencies of the interdepartmental council for the expenditure of revenue generated by the Medicaid Plan for Children and Families;

D. Request such additional resources or authorizations as may be necessary for full implementation of the plan; and

E. Include any necessary implementing legislation.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

Effective April 24, 1990.

CHAPTER 104

H.P. 1837 - L.D. 2508

Resolve, Authorizing the Governor and the Atlantic Sea Run Salmon Commission to Enter into an Agreement with Edwards Manufacturing Company, Inc.

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Atlantic sea run salmon and other anadromous species are important natural resources of the State which must be protected and restored to further the people's interests in environmental protection and recreation; and

Whereas, the historic runs of the Atlantic sea run salmon and other anadromous species can be protected and restored in the Kennebec River, one of the State's great rivers, by providing increased spawning habitat in the Kennebec River Basin; and

Whereas, anadromous fish passage and increased spawning habitat may be protected and restored more effectively by removing or breaching the barrier commonly known as the Edwards Dam; and

Whereas, the Edwards Manufacturing Company, Inc. currently owns a licensed and operating hydroelectric facility in the Kennebec River at Augusta which includes the Edwards Dam; and

Whereas, the Federal Energy Regulatory Commission license for Project 2389, the hydroelectric facility, expires on December 31, 1993; and

Whereas, Edwards Manufacturing Company, Inc. has filed a notice of intent to file a federal application for relicensing and is applying to federal and state agencies to relicense the Edwards Dam for hydroelectric purposes; and

Whereas, Edwards Manufacturing Company, Inc. currently has contracted to sell electricity from the hydroelectric facility to Central Maine Power Company and that contract expires on December 31, 1998; and

Whereas, it is in the best interest of the State, subject to regulatory approvals, to remove or breach the Edwards Dam following expiration of the existing power contract; and

Whereas, the Governor has requested that the Atlantic Sea Run Salmon Commission be the lead instrumentality of the State to effectuate the purposes of this policy and to apply to state and federal agencies for a license to remove or breach the Edwards Dam; and

Whereas, pursuant to the Maine Revised Statutes, Title 12, section 6252-A, subsection 5, the commission has statutory authority to acquire interests in dams and other real property, including the Edwards Dam; accordingly, the purpose of this resolve is to provide legislative direction with respect to the future utilization of the Edwards Dam if the commission enters into an agreement to acquire the Edwards Dam in accordance with its existing legal authority; and

Whereas, the primary purposes of this policy are to remove or to breach the Edwards Dam after January 2, 1999, and to provide for the support of the State, as provided for in the agreement, for the continued operation of the Edwards hydroelectric facility through January 2, 1999, and thereafter so long as the State is a colicensee; and

Whereas, the complex and lengthy federal and state licensing processes and the expense of litigation that may occur if these matters are not resolved require that action be taken immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Policy and findings. Resolved: That the Legislature declares it to be the policy of the State, consistent with its duties to protect the health, safety and welfare of all citizens, to enhance and maintain the quality of the environment and to conserve and enhance natural resources, to authorize the Atlantic Sea Run Salmon Commission and the Governor to enter into an agreement with Edwards Manufacturing Company, Inc., referred to in this resolve as Edwards, owner of the Edwards Hydroelectric Facility, referred to in this resolve as the facility, in Augusta, Maine, which includes the Edwards Dam, to provide for the utilization of the Edwards Dam and flowage rights for the purpose of the removal or breach of the Edwards Dam; and that pursuant to that

agreement, the State shall support Edwards' application to join the State as a colicensee and for an extension in its Federal Energy Regulatory Commission license to allow for the continued operation of the facility by Edwards until the removal or breach of the Edwards Dam by the State, which may not be earlier than January 2, 1999, in accordance with the terms of the agreement as set forth in section 2 of this resolve; and be it further

Sec. 2. Governor and Atlantic Sea Run Salmon Commission authorized to enter into agreement.

Resolved: That the Governor and the Atlantic Sea Run Salmon Commission are authorized to negotiate with Edwards to enable the State to bind the State to an agreement on such terms and conditions as they deem appropriate; provided, however, that the agreement is not inconsistent with this resolve and includes the following terms.

1. Edwards shall continue to operate the facility until the removal or breach of the Edwards Dam by the State, which may not be earlier than January 2, 1999. Edwards shall apply, at its expense, for an extension herein and to join the State as a colicensee of the facility, such application to be filed within approximately 30 days after the execution of the agreement by Edwards and the State. The State shall support Edwards in its extension application to the Federal Energy Regulatory Commission and any other necessary agencies for authorization to extend its existing license to operate the project for up to an additional 7 years and add the State as a colicensee. If the Federal Energy Regulatory Commission fails to approve the application for extension and to join the State as a colicensee by April 1, 1991, the agreement terminates.

2. If the Federal Energy Regulatory Commission grants the application by April 1, 1991, Edwards shall install an upstream and downstream fish passage facility as has been specified by the Department of Marine Resources, the construction of which must commence in the first construction season after receipt of necessary regulatory approvals.

3. If the Federal Energy Regulatory Commission grants the application for the extension and joining of the State as a colicensee by April 1, 1991, the State shall submit a surrender application as expeditiously as possible to the Federal Energy Regulatory Commission for authorization to surrender the license and remove or breach the Edwards Dam, effective no earlier than January 2, 1999. Edwards shall support the State's application. If the Federal Energy Regulatory Commission denies the State's surrender application and that decision is no longer subject to appeal, the agreement terminates.

4. If the Federal Energy Regulatory Commission fails to grant the State's application by the earlier of December 1, 1998, or the date by which an application to

compete for the license which expires on December 31, 2000 must be filed, Edwards may then file a nonincumbent competitive application for a license to operate the facility and may no longer be required to support the State's application for surrender.

5. If the Federal Energy Regulatory Commission grants the State's application to remove or breach the Edwards Dam, the Commission shall pay to Edwards no more than \$1 for the dam and flowage rights. The title to the Edwards Dam may not transfer prior to January 2, 1999, except at the sole discretion of Edwards.

6. If Edwards operates the facility after January 2, 1999, the first \$750,000 of net revenues from operation of the facility after January 2, 1999, must be paid into the Edwards Escrow Fund, established under section 4 of this resolve. Any net revenues accruing thereafter and until December 31, 1999, must be shared equally by Edwards and the State. These revenues accruing to the State must be paid into the Edwards Escrow Fund. This fund must be used to pay the costs of removal or breach of the Edwards Dam. Any unused balance in this fund must be returned to Edwards.

7. The cost of obtaining authorization to remove the Edwards Dam and the cost of removal must be borne by the State. Edwards shall defend, indemnify and hold the State harmless from any liability, claims, damages, actions or costs of the State arising from or caused by Edwards' operation of the facility. The State shall defend, indemnify and hold Edwards harmless from any liability, claims, damages, actions or costs arising from the State's activities in and around the facility. The State shall defend, indemnify and hold Edwards harmless from any liability, claims, damages, actions or costs arising directly or indirectly from the State's removal or breaching of the Edwards Dam, including, but not limited to, any liability, claims, damages, actions or costs relating to the existence in water, sediment or other matter or substances placed there by persons or entities other than Edwards, except as to actions of Edwards. Edwards shall defend, indemnify and hold the State harmless from any liability, claims, damages, actions or costs arising directly or indirectly from the operation of the Edwards Dam, except as to actions of the State, except that the ownership or lawful operation of Edwards Dam and related structures may not be a basis for liability of Edwards for materials or substances that may have collected in sedimentary or other form in, around, above or below the Edwards Dam and not placed there by the action of Edwards; and be it further

Sec. 3. Indemnification. Resolved: That, notwithstanding any statute or common law to the contrary, Edwards or its successors or assigns, is authorized to bring suit against the State for any liability Edwards incurs

on account of the State's failure to defend, indemnify and hold Edwards harmless as provided in the agreement. The State is authorized to defend, indemnify and hold Edwards harmless to the full extent provided in the agreement and the State's sovereign immunity is hereby waived to that extent; and be it further

Sec. 4. Edwards Dam Funds. Resolved: That there are established 2 nonlapsing special accounts of the Atlantic Sea Run Salmon Commission. The first fund, known as the Edwards Escrow Fund, must contain money paid into it pursuant to section 2, paragraph 6, of this resolve. The 2nd fund, known as the Edwards Dam Fund, may receive funds from any source, including any money transferred from the Edwards Escrow Fund, and is subject to expenditure by the Atlantic Sea Run Salmon Commission for purposes of removing or breaching the Edwards Dam and carrying out the commission's other responsibilities under the agreement; and be it further

Sec. 5. Action. Resolved: That the Governor and the Atlantic Sea Run Salmon Commission and all other appropriate state agencies shall take all actions consistent with the intent of this resolve and the terms of the agreement; and be it further

Sec. 6. Authorization of Atlantic Sea Run Salmon Commission. Resolved: That the Atlantic Sea Run Salmon Commission is hereby authorized to participate as a colicensee with respect to the facility and for that purpose is authorized to generate, distribute and transmit electricity for sale and perform any other acts necessary to act as colicensee under the Federal Power Act, 16 United States Code, Section 797 et seq.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective April 25, 1990.